

YAVAPAI COUNTY ATTORNEY'S OFFICE
Sheila Polk, SBN 007514
County Attorney
ycao@co.yavapai.az.us
Attorneys for STATE OF ARIZONA

SUPERIOR COURT
YAV. COUNTY, ARIZONA

2010 AUG -2 PM 4: 13

JEANNE HICKS, CLERK

IN THE SUPERIOR COURT BY: B. Chamberlain

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

V1300CR201080049

STATE'S RESPONSE TO DEFENDANT'S
MOTION IN LIMINE (NO. 3) TO EXCLUDE
AUTOPSY PHOTOGRAPHS PURSUANT
TO ARIZ. R. EVID. 403

(The Honorable Warren Darrow)

The State of Arizona, through undersigned counsel, requests that this Court deny Defendant's Motion In Limine to Exclude Autopsy Photographs. The following Memorandum of Points and Authorities support this response.

MEMORANDUM OF POINTS AND AUTHORITIES

The Facts:

On October 8, 2009, Yavapai County Sheriff's Office responded to the Angel Valley Retreat in Sedona, Arizona, for a report of numerous people in various stages of medical distress. Upon arrival, detectives were informed two persons had died after being transported to the Verde Valley Medical Center and other individuals were in altered levels of consciousness and having difficulty breathing. The subsequent investigation revealed the deaths occurred after approximately 55 people took part in a two-hour ceremony in a sweat lodge. In addition to James Shore and Kirby

Office of the Yavapai County Attorney

255 E. Gurley Street

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Brown, the two people who died, numerous others were hospitalized. On October 17, 2009, a third
2 participant, Liz Neuman, died.

3 Autopsies were performed on James Shore and Kirby Brown by Dr. Robert E. Lyon of the
4 Yavapai County Medical Examiner's Office, and on Liz Neuman by Dr. A. L. Mosley of the
5 Coconino County Medical Examiner's Office. Dr. Lyon concluded the cause of death of both
6 Kirby Brown and James Shore was heat stroke; Dr. Mosley concluded the cause of death of Liz
7 Neuman was multisystem organ failure due to hyperthermia due to prolonged sweat lodge
8 exposure. On February 3, 2010, the Yavapai Grand Jury indicted Defendant on three counts of
9 manslaughter for the deaths of victims Kirby Brown, James Shore and Elizabeth Neuman.

10 Both Dr. Lyon and Dr. Mosley have been interviewed by Defendant. Defendant currently
11 has a Motion to Compel before this Court in which it argues the State has failed to disclose
12 information relating to a pre-indictment meeting between the prosecutors, the medical examiners
13 and the detectives assigned to this case. In the Motion to Compel, Defendant repeatedly
14 emphasizes the lack of clinical evidence of heat stroke found during the autopsies. On July 1,
15 2010, Defendant disclosed Dr. Ian Paul as an expert witness he intends to call at trial. Although
16 the State has not received any further disclosure relating to Dr. Paul, he is employed as an
17 Associate Medical Investigator by the New Mexico Office of the Medical Investigator.

18 **Legal Argument:**

19 The admission of photographs involves a three-part inquiry: (1) relevance; (2) tendency to
20 incite passion or inflame the jury; and (3) "probative value versus potential to cause unfair
21 prejudice." *State v. Anderson*, 210 Ariz. 327, ¶ 39, 111 P.3d 369, 381 (2005) (citing *State v.*
22 *Murray*, 184 Ariz. 9, 28, 906 P.2d 542, 561 (1995)); *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d
23 457 (1997); Rules 401-403, Ariz. R. Evid. A photograph, like other evidence, is relevant if it aids
24
25
26

1 the jurors in understanding an issue in the case, or "helps illustrate what occurred." *State v.*
2 *Rienhardt*, 190 Ariz. 579, 584, 951 P.2d 454 (1997). Inflammatory photographs are admissible if
3 they are relevant and their probative value outweighs the danger of unfair prejudice. *Id.*

4 The Arizona Supreme Court has held that arguably gruesome or inflammatory
5 photographs may be properly admitted for the following purposes:

6 [T]o prove corpus delicti, to identify the victim, to show the nature and location of the
7 ... injury, to determine the degree of the crime, to corroborate state witnesses, to
8 illustrate or explain testimony, and to corroborate the state's theory of how and why
9 the [crime] was committed.

10 *State v. Moorman*, 154 Ariz. 578, 586, 744 P.2d 679, 687 (1987) (citing *State v. Castaneda*, 150
11 Ariz. 382, 391, 724 P.2d 1, 10 (1986)).

12 The fact that a defendant chooses not to contest a particular issue or element of a crime
13 does not mean that the photograph is not relevant because "the prosecutor's burden to prove every
14 element of the crime is not relieved by a defendant's tactical decision not to contest an essential
15 element of the offense." *Estelle v. McGuire*, 502 U.S. 62, 69, 112 S. Ct. 475, 481 (1991)
16 (emphasis added); accord, *Rienhardt*, 190 Ariz. at 584, 951 P.2d at 459 (photos of murder victim
17 were relevant to show what occurred, notwithstanding defendant's offer to stipulate to the cause
18 of death); *State v. Stuard*, 176 Ariz. 589, 602, 863 P.2d 881, 894 (1993) (although the defendant
19 did not contest the manner of death or the identity of the victims, the photographs were still
20 admissible); *State v. Amaya-Ruiz*, 166 Ariz. 152, 171, 800 P.2d 1260, 1279 (1990) (in prosecuting
21 a case, the state must be allowed some latitude to show what actually occurred). Furthermore,
22 because the State has the burden of proving every element of murder, photographs of a homicide
23 victim's body are generally admissible because "the fact and cause of death are always relevant in
24 a murder case." *Bocharski*, 200 Ariz. at 56, ¶ 22, 22 P.3d at 49 (citing *State v. Harding*, 141 Ariz.
25
26

1 492, 499, 687 P.2d 1247, 1254 (1984) quoting *State v. Chapple*, 135 Ariz. 281, 288, 660 P.2d
2 1208, 1215 (1983)).

3 The State intends to call Dr. Mosley and Dr. Lyon to testify as to their findings from the
4 victims' autopsies. The photographs will not only be relevant to establish the identities of the
5 three victims, they may also be necessary to help jurors in understanding the doctors' testimony.
6 These are relevant purposes. See *State v. Jones*, 185 Ariz. 471, 485, 917 P.2d 200, 214 (1996)
7 (photographs were relevant to illustrate medical examiner's testimony.); *State v. Salazar*, 173
8 Ariz. 399, 407, 844 P.2d 566, 573 (1992) ("If the purpose of the offer is to assist the jury in
9 understanding testimony, photographs may be admissible even if they are gruesome."); *State v.*
10 *Gerlaugh*, 134 Ariz. 164, 169, 654 P.2d 800, 805 (1982) (even though medical examiner testified
11 he did not need the photographs to describe the wounds, the photographs may have assisted the
12 jury in understanding his testimony, "particularly in light of the fact that his descriptions were
13 couched in technical medical terms."). Moreover, the State has yet to interview the Defendant's
14 expert and has not been provided with notice of his findings. Until this occurs, the State cannot
15 know what photographs will be relevant during its examination of this witness.
16

17 The State has not, as of this date, chosen any particular photographs to be shown to the
18 jury. The State will attempt to choose photographs which illustrate the important evidentiary
19 issues but minimize the inflammatory impact. The State will present all photographs it intends to
20 use at trial to the Court for review prior to the trial. At that time, the State will explain the
21 intended purpose of each photograph and the Court will have the opportunity to "balance the
22 probative value of the photographs against any danger of unfair prejudice created by their
23 admission." *State v. Bailey*, 160 Ariz. 277, 280, 772 P.2d 1130, 1133 (1989). This is a
24 determination that is left to the discretion of this Court. Defendant's motion attempts to usurp the
25
26

Office of the Yavapai County Attorney

255 E. Gurley Street

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Court's discretion to determine the admissibility of the photographs in this case and should be
2 denied.

3 RESPECTFULLY submitted this 2nd day of August, 2010.


4
5
6 By 
7 SHEILA SULLIVAN POLK
8 YAVAPAI COUNTY ATTORNEY

9 **COPIES** of the foregoing emailed this
10 2nd day of August, 2010:

11 Hon. Warren Darrow
12 Dtroxell@courts.az.gov

13 Thomas Kelly
14 tkkelly@thomaskellypc.com

15 Truc Do
16 Tru.Do@mto.com

17 By: 

18 **COPIES** of the foregoing delivered this
19 2nd day of August, 2010, to

20 Thomas Kelly
21 Via courthouse mailbox

22 Truc Do
23 Munger, Tolles & Olson LLP
24 355 S. Grand Avenue, 35th Floor
25 Los Angeles, CA 90071-1560

26 Via U.S. Mail

By: 